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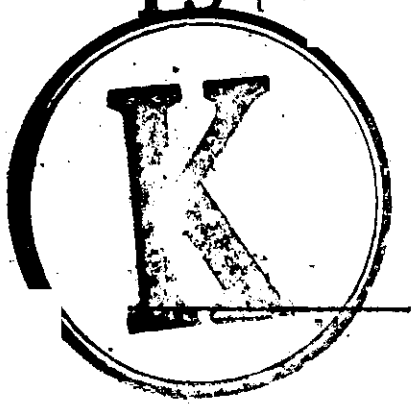

File No. O.I.F. (Ext.) 14

Part I

Legal DEPARTMENT

A BRANCH

Subject:—

Opinions under the

Indian Prev. Emergency

(powers) Act; 1931.

(For subsequent Papers

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Pt. I

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C O N T E N T S.

Legal Department File No. U.I.P (H.P.) /49 Pt. I

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Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the notice under section 3(1) must specify the clause of section 4(1) and whether, for lack of such specification the order of forfeiture consequent upon the notice is invalid.

2. The question may first be approached without reference to authority and mainly upon the wording of the relevant provisions. Section 3(1) provides that if any newspaper, etc., contains any words, signs or visible representations which, in the opinion of the Provincial Government, are of the nature described in section 4(1), the Provincial Government may, by notice in writing to the publisher of such newspaper stating or describing such words signs or visible representations, etc. It will be noticed that this provision speaks only of words, etc., being of the nature described in section 4(1) and not being of nature described in any particular clause of section 4(1). The requirements are strictly and completely fulfilled so long as the notice states or describes the words, signs or visible representations which are alleged to fall within sub-section (1) of section 4. The same phraseology is repeated in every relevant provision of the Act where powers are given either to demand an enhanced security or to forfeit the security (of section 3(3), section 6(1), section 7(3) and section 10(1); also section 19). We cannot, therefore , import into the section the further requirement that the notice must also state the clause of sub-sectio (1) of section 4. The description or statement in the notice of the offending words is all that the section demands, and it is not permissible to courts to demand any other requirement. It is the offending words which constitute the gravamen of the charge; and even the principle of adequate notice to an accused person of the facts alleged against him is substantially satisfied by drawing his attention to the offending words.

3. Section 23(1) of the Act, which provides for an application

to the....

to the High Court, says that the High Court shall decide if the newspaper, book or other document, in respect of which the order was made, did or did not contain any words signs or visible representations of the nature described in section 4(1). Section 25 says that, if it appears to the Special Bench on an application under sub-section (1 of section 23 that the words, sighs or visible representations contained in the newspaper, book or other document in respect of which the order in question was made were not of the nature described in sub-section (1) of section 4, the Special Bench shall set aside the order. The combined effect of these provisions is that the High Court is required to decide whether the offending words do or do not fall within the ambit of sub-section (1) of section 4. It is pertinent to note that neither provision says that the High Court is called upon to decide whether they fall within any particular clause of sub-section (1). It is the duty of the High Court to see that the offending words do not come within any of the clauses of sub-section (1). It is only after reaching such negative conclusion that the High Court is authorised to set aside the order and not otherwise. The burden of proving the negative, namely, that the offending words do not come within any of the clauses of sub-section (1) of section 4 rests upon the petitioner following the usual principles of burden of proof that he who seeks to get a judgment from the Court - in this instance that the words do not fall within the ambit of sub-section (1) - must establish that fact.

4. Turning now to the authorities, the view taken in para. 3 above has received judicial support. In A.I.R. 1932 Calcutta, p.738 (In re. Amrit Bazar Patrika), this precise argument was urged and was disposed of in the following words:

"The second contention of Mr. Basu was to the effect that the Government's order was bad because it did not state the particular clause in sub-section (1) of section 4

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> of the Indian Press (Emergency Powers) Act, 1931, as amended against which the article in question was found to have offended. The Act itself, however, carefully provides what the notice is required to contain. The provision is not framed in the same manner as in previous Press Acts. The requirement is : 'stating or describing the words, signs or visible representations which in its opinion are of the nature described above.' In the present case, the local Government have carried out the directions of the Act and it is not for this Court to impose any futher requirements. This contention therefore fails." (p.743 of the report).

In Dube v. King Emperor (I.L.R.1944 Nagpur p.680), the contention was disposed of as a frivolous contention, which shows what value the court attached to it.

It was remarked:

> "The short answer to the contention is that neither section 3(3) nor section 7(3) constrains the Provincial Government to do anything more than to state or describe the words complained of. The sub-section lays down that, when it appears to the Provincial Government that a document containing any words of the nature described in section 4, sub-section (1), has been printed or published, a notice is to be given to the printer or publisher stating or describing such words. There is no obligation whatever on the Provincial Government to record its opinion in the notice as to which particular item of sub-section (1) of section 4 applies. (p.682 of the report.).

The following observation in Kotamraj Punniah v. King Emperor (I.L.R.1947, Karachi, p.54 at pp.56-57 are also material:

> "When Government has once ordered security to be deposited under the law then in force, that deposit is held generally for good conduct not only in the matter of the particular class of case which occasioned the order, but generally as security against offending under any of the clauses of section 4 of the Press Act. Sub-section (3) of section 7 of the Press Act refers generally to 'words, signs or visible representations' described in sub-section (1) of section 4; it refers to sub-section (1) of section 4 and not to any particular clause of that section. Therefore, we do not think there is anything in the point that merely because clause (bb) now no longer finds place in section 4(1) of the Press Act, the order as to deposit is no longer a lawful order."

5. The other reported decisions may be cited with profit in support of the general proposition that the notice need not do anything more than merely state or

describe....

describe the words. Thus, in the case of Abid Ali Khan v. The Government of the United Provinces (I.L.R. 20 Lucknow, p.236) it was held that section 3(3) did not constrain the Provincial Government to do anything more than to state or describe the words. It does not require that every word to which objection was taken by Government should be reproduced verbatim in the notice. In the Daily Sivasat case(I.L.R. 18 Lahore, p.433) it was ruled that the notice was not defective merely because it did not describe the contents of the article in the text but a translation of the article was annexed to it. These decisions confirm the general argument that it is not necessary to specify in the notice anything more beyond a mere statement or description of the offending words, the sole purpose being to invite the attention of the person to the words which gave rise to the notice so that he may in his application demostrate how those words do not fall within the scope of the several clauses of the sub-section. It follows therefore, that it would not be permissible to insist that the notice should specify the particular clause.

6. The Principle that the burden of proof lies upon the petitioner has been recognised by the Calcutta High Court in re. Anandabazar Patrika (I.L.R. 60 Calcutta, p.408 at p. 419).

7. If the points made in the above paragraphs are accepted, it would then follow that it would not be necessary to mention in the notice the clause of sub-section (1) of section 4. The order cannot be declared invalid for failure to specify the clause. Not only is there no decided case in favour of the opposite view, but the cases cited above disapprove of that view is no uncertain terms. It is interesting to refer to Prithvi Das Sherma v. The Crown (I.L.R. 12 Lahore p.345) where

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the notice did not mention any particular clauses and no argument was made on that score.

8. If it be contended that the requirement of the specification of the clause follows as a corollary from the stand taken in Ketkar's case and in Joachim Alva's case, our submission should be that such further extension of the proposition in those cases by a process of judicial reasoning is not permissible. All that those cases decided was that, if as a part of the notice any particular clause is mentioned , it would not be open to the Crown to change its stand and contend that the offending words fell within the scope of some other clause. That was decided on the ground that once a notice of a charge with particulars is given to a person and the person comes to the court to set aside an order which purports to be based on that charge, the Crown cannot be allowed to go behind that charge or enlarge those particulars. As I will presently show, it can be successfully argued that those cases were wrongly decided. But even assuming the correctness of the decisions, they must confined to the narrow proposition which they enunciate. To say that the Crown cannot at the stage of an application in the High Court alter the charge is quite different from saying that in the inception of proceedings the Crown must supply in the charge the particulars of a clause. The Crown may be held to the election it has ormade, but it cannot be compelled to make the election.
9. If it be necessary to do so, we should be prepared to further and say that Ketkar's case and Alva's case were wrongly decided. Even if a x clause is mentioned in the notice, it is still the duty of the High Court

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to satisfmy itself before making the order that the words do not offend against any of the other clauses. The case of Vishnu Gangadhar Ketkar v. Government of Bombay (47 Bom. L.R. p. 57), where it was held that Government cannot be allowed to go behind the clause mentioned or enlarge those particulars, has gone too far and is wrongly decided. Divatia J. seems to imagine that the mention or the specification of the clause is a part of the stautory provision when in fact it is not so. What the statutory provision requires is a mere statement or description of the offending words and it makes no reference whatsoever to the specification of any clause. Such specification is an act of mere supererogation on the part of Government and does not thereby become an integral part of the statutory form of notice. The ration of the decision on this point in Vishnu Gangadhar's case and also in the subsequent case of Joachim Alva is, therefore, incorrect. The specification of the clause, which is really redundant, would not relieve the High Court of the obligation cast upon it in terms by

section.....

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section 25 of deciding the negative that the offending words do not fall within the whole of sub-section (1) - and not any particular clause of sub-section (1) - of section 4.

10. If it be argued that the notice is of the nature of a charge and must indicate the precise clause, since Government cannot be allowed to substitute a different clause from the one they had specified in the notice, the reply should be as follows: In the first place, although the provisions are of a punitive character for the purpose of interpretation of the statute they are not always penal, but are of a preventive nature especially where security is merely demanded (and not forfeited) on the same ground. That has been recognised in I.L.R.1944 Nagpur quoted above, where it was said that the order is not a puhishable as such, but is a precautionary measure. The same view was taken in I.L.R.1947 Karachi quoted above, where it was said that the deposit is held generally for good conduct. The deposit is not a fine levied for a particular known offence. It is the earnest of good conduct and can be forfeited if the newpaper of press lapses into misconduct. Therefore, the mention in the notice of any particular clause must not be constnued as if thereby any particular section constituting an offence is being described. In this respect, no distinction can be drawn between demanding and forfeiting security since the phraseology describing the grounds upon which the order can be made is the same viz. that the words are of the nature described in section 4(1).

11. Attention is invited to section 237 of the Criminal Procedure Code wherein it is provided that in a case where it is doubtful which of the several offences the facts which can be proved will constitute and the accused is charged with one offence and it

appears in the evidence that he committed a different offence for which he might have been charged under the provisions of section 236, he may be convicted of the offence which he is shown to have committed, although he was not charged with it. In cases of this kind there is no trial. The only trial is before the High Court. Assuming that the Government come forward with an allegation that an offending passage falls within a particular clause and the High Court after considering the passage finds that it falls under another clause, it would still be open to the High Court, following the analogy of sections 236 and 237, to say that the passage falls under that clause and therefore that the order is good.

12. Even if the extreme view were taken, we can fall back upon the principle contained in section 537 of the Code of Criminal Procedure, which provides that no error, omission or irregularity in a charge affords ground for reversing an order or altering a sentence. If the notice is treated as a charged and the demand or forfeiture of the deposit is treated as a sentence of fine, the principle of section 537 would still preclude the reversal of that sentence merely on the ground that the particula clause of sub-section (1) was not mentioned, although due notice was given to the person concerned by stating the offending words.

F.C. signed by R.L.A.
Remembrancer of Legal Affairs.

.NO. 471-Confl. dt. 24-8-1948.

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Judgment recorded by the High Court in Criminal Application No. 1183 of 1948 in the case of Rex. Vs. Victor Mohan Kaul.

.....

Counsel Mr. L.M.Jhavery with Mr. H. J. Chinoy and S.A. Meemachwala for the-Applicant.
The Advocate General with the Government Pleader for the Respondents.

.....

Coram: Chagla C.J. and Gajendragadkar and Jahangirdar JJ)

27th August 1948.

Oral Judgment : (Per Chagla C.J.):-

This is an application under section 23 of the Indian Press (Emergency Powers) Act, and a few facts may be stated which would make clear the contention urged before us by the applicant. It seems that one Rao was the printer and publisher of a Marathi weekly known as "Lok-Yug" prior to April 1948. On the 11th of April 1948 an article was published in that paper which is the impugned article. On the 27th of April 1948 Rao was arrested by Government. On the 7th of May 1948 Government demanded from Rao a security of Rs. 3,000/- under section 7(3) of the Act. On the 4th of May 1948 the applicant made a declaration as the printer and publisher of this newspaper under section 7(1) of the Act. On the 12th of May 1948 the learned Presidency Magistrate made an order calling upon the applicant to deposit security in the sum of Rs.1,000/- and on the 13th of May 1948 the applicant deposited the amount. On the 30th of June 1948 the Government passed an order forfeiting the security of Rs. 1,000/- under section 8(1) of the Act.

The contention of Mr. Javery on behalf of the applicant is that the order made under section 8(1) is invalid in as much as the impugned article was published prior to the security which the applicant was called upon to make on the 12th of May 19
Now, the scheme of the Act is fairly clear. Under Section 7(1)

a publisher of a newspaper has to make a declaration and when he makes a declaration he may be required by the Magistrate before whom the declaration is made to make a deposit. Under Section 7(3) it is open to the Provincial Government, if a newspaper contains any words, signs or visible representations of the nature described in section 4, sub-section (1), to require the publisher to deposit a security of such an amount not being less than Rs. 500/- or more than Rs. 3,000/-. Therefore, security can be demanded either by the Magistrate under section 7(1) or by the Provincial Government under section 7(3). Then we come to section 8(1) which provides that if any newspaper in respect of which any security has been ordered to be deposited under section 7 contains any objectionable words referred to in section 4(1) then the Government may, where the security has been deposited, declare such security to be forfeited to His Majesty, and where no security has been deposited, annul the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act, 1867. Therefore it is clear, looking to the plain language of section 8(1), that it is only when a newspaper contains objectionable words after the security has been ordered to be deposited that the security can be forfeited. Security is always given for good conduct in the future in order to fulfil obligations which may arise in future, and it is only when those obligations are not carried out or the conduct is objectionable that the security which is given for that purpose can be forfeited. Therefore under section 7(3) the Government may require security for past misconduct. If security is given and there is no offending article published, then nothing more happens. But if an offending article is published after security is given, then the Government can act under section 8(1) and forfeit that security.

Now, in this case the offending article was published on the 11th of April 1948 and the applicant was ordered to give security on the 12th of May 1948. The newspaper, of which the applicant is the printer and publisher, has published no objectionable article after the 12th of May 1948 in respect of which Government can forfeit the security under section 8(1).

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4 copies.

The Advocate General has contended that the scheme of the whole Act is that it is not the printer or publisher that is to be penalised, but the newspaper. We agree with that view of the statute. It is perfectly true that if a security is given and after the security is given the printer or publisher is changed and new printer or publisher appears on the scene, the security already given can be forfeited although at the date of the publication the printer or publisher was not the same printer or publisher. To that extent the question as to who was the printer or publisher at the date of the publication of the article may be immaterial. But it is essential and necessary that there must be a security antecedent to the publishing of the article. It is that security which is lying with the Government for the good conduct as it were of the newspaper that alone can be forfeited under section 8(1 1) of the Act.

The Advocates General relied on two decisions which according to him supports his contention. The first is a decision of the Nagpur High Court reported in Rewa Prasad Dube v. Provincial Government, Central Provinces and Berar. I.L.R. 1946 Nagpur, 90. The head note is rather deceptive : "A keeper of a printing press or a publisher of a newspaper is liable for acts previously done. The Provincial government is therefore, competent to forfeit a deposit made by a keeper of a press for an objectionable article published before the keeper makes the deposit." Now, when one looks to the facts of the case it is clear that there was already a security deposited before the offending article was published in the newspaper and the order of forfeiture was passed with regard to the security already deposited. The article in this case was published in the Nagpur Times on the 15th December 1944. At that time one Ambica Charan Shukla was the printer and publisher and he continued to be the

printer....

printer and publisher till the 21st of December 1944. The applicant was the printer and publisher from the 27th of July 1943 and he had furnished security in the sum of Rs. 1,750/- both as the printer and publisher and as the keeper of the press, That security was forfeited by Government. Then the High Court of Nagpur on the 22nd of November set aside the order of forfeiture and on the 22nd of December the applicant again became the printer and publisher of the newspaper and the keeper of the press, and it was arragned between the Government and the applicant that the security which had been ordered to be refunded by the High Court should continue as the security originally given by him on the 27th of July 1943, or, in other words, the status quo ante should be restored. It is on these facts that the Nagpur High Court came to the conclusion that the mere fact that on the 15th of December when the offending article was published in the Nagpur Times the applicant was not the printer of publisher did not preclude the Government from issuing an order under section 8(1) and that the newspaper was liable to be penalised and it was penalised by the security being forfeited. The other decision is a decision of the Lahore High Court, In the matter of the Indian Press (Emergency Powers) Act, 1931, and of the 'Daily Siyasat, Lahore, I.L.R. 1937 Lahore, 438. That was not a case of forfeiture of security at all. That was a case of security being required under section 7(3) and security was required from a printer or publisher who was not the printer or publisher at the time the offending article was published. With respect, the decision of the Lahore High Court is perfectly right because a printer or publisher who is not the printer or publisher at the time of the publication of the offending article may be called upon to give security for the future good conduct of the newspaper. It is in this connection that the learned Chief Justice elivering the judgment of the Bench pointed out that the

scheme of the Act was to penalise the newspaper and not the printer or publisher who was responsible for the offending article.

Turning to the plain grammatical construction of section 8(1) itself, it is clear that the order for deposit of security must precede the publication of the words, signs or visible representations falling under section 4. The present perfect tense is used with regard to the order of the deposit of a security and the present tense is used with regard to the newspaper containing the offending words. The Legislature has used these two different tenses clearly for the purpose of indicating that what is indicated by the present perfect tense must precede what is indicated by the present tense.

Under the circumstances , we are of the opinion that the order made by the Government cannot stand. The order must be set aside and the Government be ordered to refund to the applicant the security which has been forfeited by Government. Government must pay the costs.

.....

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The Advocate General who argued this matter before the High Court Magistrate, kindly indicate the view whether an appeal to the Pridy Council should be made and whether it will succeed.

Id/- P. M. L.
14/10

548-Confl
18/10/48.

The Advocate General
(Mr. M. P. Amin).

In my opinion, no useful purp[illegible], keeping futher proceddings beefore the Privy Council in this matter.

Sd/- M. P. Amin.
24/49.

Office of the R.L.A.

Submitted .

The Advocate Genral's opinion overleaf may be

Ld. N.P.R
25/1

R.L.A. Id/- P.M.L.
25/1 It may be communicated to the Department.

U.R. to H.D. (Poll) No. 60/Conf) dt. 22-1-1949

JPE. 14/5/58
4 copies

Office of the R.L.A.

The question raised for the R.L.A.'s consideration is whether the leaflet under the caption,"The article by Mr. Benhatti about the Rashtriya Swayamsevak Sangh - the Sangh has scored a moral victory", is actionable under section 4(1)(d) of the Indian Press (Emergency Powers) Act of 1931.

2. The article seeks to refute the various charges levelled against the R.S.S. and to demonstrate that Government have not been able to substantiate any of those charges by producing evidence or by placing the persons concerned on their trial. The article then goes on to explain the moral responsibility on Congress leaders and exhorts them to do some introspection. It ends by saying that the followers of the Sangh by their discipline, modesty and restraint have brought glory to their association, and that no evidence of any misconduct has been brought forward against any young member of the Sangh.

3. Attention is invited to R.L.A.'s opinion No. 724- Confl., dated the 29th December 1948. In accordance with the principles explained therin, it would seem that the article would not be actionable under section 4(1)(d) and that it would be entitled to the benefit of Explanations 2 and 3 to that section. A reasoned refutation of the various charges and allegations made against an association which has been declared unlawful and accusing members of a rival political party of trying to repress the association would not amount to bringing into hatred or contempt the Government established by law or to excite disaffection towards the said Government; and comments in disapproval of the policy of Government are permissible if they are made without exciting or attempting to excite hatred, contempt or disaffection.

Id/- P. M. L.
1/3
Remembrancer of Legal Affairs.

U.R. to H.D. (poll) no.2451 dated the 3rd March 1949.

JPS. 14/5/86. 4 copies.

The opinion of the H.L.A. is sought on thequestion whether the leaflet entitled "Laws of Islam" printed by Mohamed Alim Kurashi is covered by clauses (a),(b) and (h) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

2. If the leaflet were to fall in the hand of an ordinary unwary reader, he would be justified in thinking that since the writer is a Muslim by name, he was advocating that Muslims should follow the laws of Islam as stated by him therein, and that, what is more, when Muslims cannot practise some of them under a non-Muslim Government, they should not remain loyal to such a Government. The so-called laws include murder and robbery of non-Muslims, the assignment of the wives and children of the murdered non-Muslims to the conquring Muslims, death for apostates, forcible conversion. Taken by itself, therefore, the leaflet would undoubtedly be actionable under clause (a) and particularly under clause (h) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

3. It, however, transpires that the true facts are that the writer Mohamed Alim Kurashi is not a Muslim but having become disgusted with Islam, has got himself converted through Arya Samaj two years ago, and he is now interested in condemning the religion he has renounced. The other two pamphlets issued by him, namely, "The Rationale of Cow Worship" and "Vartaman Sanskrit" support the view that his object is to carry on propaganda against Islam. If that be so, and when the leaflet under discussion is read in that light, it would be obvious that it is of a highly inflammatory nature and is bound to arouse bitter hostility of the Muslims. The selection of the so-called laws is perverse, and even the Prophet is reviled when it is said that one of the Islamic laws is "the marriage of old men with female infants - Prophet himself, when 52 marri Ayesha who was only 8 years old". On these facts also the

leaflet would be actionable under clause (h) as tending to promote feelings of enmity or hatred between different classes (~~clauses~~) of His Majesty's subjects.

Id/- P. M. L.
3/3
Remembrancer of Legal Affairs.

U.R. to H.D. (Poll.) No. 2501, dated the 4th March 1949.

JPE. 18/5/56.
4 copies.

Office of the R.L.A.

The R.L.A. is requested to advise whether articles Nos. 1,14 and 15 marked in the issue of "New Age" dated February 27, 1949, are actionable.

2. The first article is published under the caption "Railwaymen ready for action from March 9 - Fascist repression will steel fighting font". It is principally of the nature of a tirade against Mr. Jaya Prakash Narain and the Socialish Party for collaborating with Government in the repressive measures contemplated against the railwaymen who had decided to go on strike on March 9, 1949, with a view to getting redressed certain of their legitimate grievances in respect of wage, victimisation and confirmation of temproary and casual workers. It is true that in the course of the article an attempt has been made to criticise the repressive policy pursued by Government, and the criticism is couched in rather strong and objectionable language. Thus it is stated :

> "A Government that cannot guarantee even the most elementary rights of trade union democracy, a Governme that cannot rule except by throwing the common mass of people in jail, a Government that is shooting down workers and peasants, students and common middle-class has no right to exist. This is the lesson of history. This ~~is~~ is the lesson which the arrogant Fascists refused to learn; but in the end they vanished from the face of the earth."

Although the suggestion is that Covernment is guilty of the ~~x~~ acts which are alleged in this paragraph, the only concrete allegation made against Government in the course of the article is that by taking repressive measures agimst railwaymen to prevent them from going on ~~xkkx~~ strike, Government has denied the most elementary right of trade union democracy to strike for bargaining better terms. This allegation, by itself, cannot in any way be considered objectionable. The criticism quoted above may be construed as inteded to ~~is~~ illustrate the proposition that a Government of that kind has no right to exist. The article must be read as a whole, in fair,

free and liberal spirit having due regard to the freedom generally accorded to journalists to discuss the nature of the adminstrative acts of Government, to disapprove them and to attack them and to use forceful and strong language, if necessary, to do every thing legitimate and honest in bringing before the public the fact that Government's measures or its actions are disapproved by a section of the public or by that particular journalist. So long as dishonest motives are not imputed, and an attempt is not made to arouse or engender feelings of enmity, hatred or disloyalty against Government, criticism, however harsh and uncompromising, would no be held actionable. Making, therfore, due allowance for language which has become the stock-in-trade of political demagogues and the main purpose and tenor of the article, it would be difficult to treat it as falling within clause (d) of section 4(1); and it would be entitled to the benefit of Explanations 2 and 3 to that sub-section.

3. Article No. 14 under the caption " Under military administration in Hyderabad - Concentration camp contions for political prisoners" described the hard conditions in which hundreds of communists and trade union leaders, who have been clapped behind prison bars, are alleged to have been incarcerated. It is alleged that the treatment as ordinary criminals rotton food, lack of medical attention, of books and newspapers and facilities for reading and writing, harassment and ill-treatment is the common pattern in all these jails. Instances of ill-treatment and harassment are also catalogued. The article would undoubtedly excite contempt for the military administration at Hyderabad.

4. More so would the other article No.15 under the caption "Through terror they want to bring back exiliters - Police and military raids in Telengana

villages." It is alleged in this article that in the course of raids untold gruesome atrocities were committed with impunity, and allegation have been made of houses broken open, property looted, women raped, men, women and children beaten. This article would undoubtedly demonstrate the indifference of the Military Government in Hyderabad to the welfare of the people and its failure to protect its subjects and their property. Both these articles would thus have a tendency to excite feelings of hatred and contempt towards the Military Government of Hyderabad. 5. However, in as much as Hyderabad is not presumably an acceding State and its position in the schem of States is rather obscure, the article would not come within clause (j) of section 4(1); It is equally difficult to hold the article actionable under clause (d), becuase, that clause speaks of Governments established by law in the Provinces of India. Hyderabad not yet being part of India in any sense, the Government established there, although it may be functioning under the control of the Central Government, would not be legally accepted as Government established by law in a Province of India.

Id/- P.M.L.
19/3
Remembrancer of Legal Affairs.

U.R. to H.D. (Pol.), No. 188-Confl dated the 15th March 1949

JPE. 15/3/56.
4 copies.

Office of the R.L.A.

The question raised for the R.L.A's advice is whether the article published in the issue dated 20-2-1949 of Jai-Hind is actionable under section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

2. The only clauses of sub-section (1) to which the article can be referred are clauses (a) and (b), particularly clause (b). The article condemns Godse's act of assassination in no uncertain manner and says in terms that he and the abetter Apte both deserve the death sentence. In another passage they are compared to Ravana, Hiranyakashyap, etc., who represented satanic forces in Indian mythology There is a passage which commends the unparalleled courage and sincerity evinced by Godse because "there is a saying that good qualities should be appreciated at all costs even though they are to be found in an enemy" and it is added that Mahatma Gandhi, had he survived, would not have failed to extol this honest courage and self-lessness of Godse. The article ends with a philosophical reflection that the world has to march on only through such incidents and that when this realised, none feels sorry for and is suprised at such an incident and the reactions resultant therefrom. The only offending passage is one where the courage of Godse is commended in the manner descri ed above. This passage cannot, however, be singled out in isolation to the exclusion of the whole drift and tenor of the article. The usual rule is to read these articles in a free, fair and liberal spirit without dwelling too much upon isolated passages and to consider the effect of the whole article on the mind of an average reader. Praise and condemnation are so cleverly blended together in this article that it would be very difficult to hold that, read as a whole, it would excite in the mind of the average reader to approval or admiration of the offence of murder committed by Godse as the perpetrator of that offence. That being so, it would be still more

difficult to prove that it incites to or encourages or tends to incite or encourage the commission of the offence of murder. In my opinion, therfore, the article would not appear actionable under sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931.

Id/- P. M. L.
30/3
Remembrancer of Legal Affairs.

U.R. to H.D.(Poll) No,3488 dated the 31st March 1949.

JPE. 15/5/56.
4 copies.

Confidential

Office of the R.L.A.

The question raised for the R.L.A.'s consideration is whether the three articles in the issue of the "Current Affairs" dated 20-3-1949 and its vernacular counterparts are actionable.

2. The first article under the caption "Fascist repression against Railwaymen reveals real face of Government" no doubt contains certain passages which appear objectionable, and on the whole it is couched in language of hyperbole. Nevertheless it is to be read as a whole, and we cannot dwell only upon isolated passages. The burden of the article is that Government is determined to put down the workers' struggle with repression and force, and the Government is also accused of bolstering up the Indian and foreign capitalists and of helping them, as it is said, by ~~kaixxxxx~~blood and terror to impose their will on India's toiling millions. Comments upon Government's policy and measures in dealing with the Railway strike would ordinarily be saved by Explanation 2 and 3 to section 4(1) of the Indian Press (Emergency Powers) Act, unless it can be demonstrated that the comments were such as would excite or attempt to excite hatred, contempt or disaffection. In construing articles of this kind, it was recently held by the Madras High Court in the case of Rajagopala Rao v. the Province of Madras (I.L.R. (1949) Madras p.149) that the criticisms of the action of the Government, even if the disapprobation was expressed in strong language, would not fall within section 4(1)(d) of the Act. Before it can be held that the words in an article have the tendency set out in that clause, it must be clear that the tendency must be felt by the ordinary man in the street. It would not be sufficient, that a member of the Communist party on reading the article in question will entertain feelings of enmity or hatred against the Government, to bring the

words within the mischief or the enactment. Judged by this standard and making due allowance for the stock-in-trade of such journalism, it would be difficult to hold that the article falls within clause (d) of section 4(1) of the Indian Press (Emergency Powers) Act.

3. The second article, namely, "Bombay experiences Police raj on March 9" gives a very lurid and exaggerated picture of what happened on March 9. But there is in that article no incitment to disaffection or hatred, the main burden of that article being that the workers were denied the right of striking work at the point of the bayonet. The last article "Lessons of March 9" contains nothing which is really objectionable. The lesson is said to be that the workers must be able to fight and defeat the forces of fascist repression. It is not stated what method of fighting the repression they should adopt, whether the method should be violent or otherwise.

4. On the whole, these articles do not appear to be objectionable under section 4(1) of the Indian Press (Emergency Powers) Act.

Id/- P. M. L.
25/4
Remembrancer of Legal Affairs.

U.R. to H.D. (Poll) No. 261-Confl, dated the 26th April 1941

JPR. 15/5/56.
4 copies.

Office of the R.L.A.

The question raised for the R.L.A's consideration is whether the article in the humorous columns "Bagh-o-Bahar" by Bulchin of the Rozenama-e-Khilafat is actionable as likely to excite disaffection of Muslims towards Hindus.

2. The writer professes in a humorous vein to demonstrate how the cause of Urdu is now languishing. However, the article is so cleverly written as to suggest in an unmistakable manner that the so-called said plight of Urdu to-day is part of a general scheme of depriving the minority community of Muslims of their legitimate cultural rights and of forcing on them a Hindu pattern. There is sufficient material in the article to show that its tendency is not merely to bewail the fate of Urdu but to emphasise the tyranny of the majority over the minority. Thus it is stated that after freedom the majority in India (meaning thereby the Hindus) felt the big brother complex and the feeling was vigorously in operation that revenge for the indiscretion of the younger brother (meaning thereby the Muslim) should be taken as much as possible as such opportunity might not come. Consequently behind another mask of common nationality he (meaning thereby the Hindu) started to consign to oblivion the younger brother's rights to his civilisation, culture, literature, language, security of life and property and the preservation of his honour and self respect and for his crime of separation newer patterns for his existence are being devised, that Devanagari or Hindi is one such pattern in which the literary and cultural life of the minority is being forcibly fettered. Addressing himself to Seth Govind Das, a well known champion of Hindi, the writer says; "Before the flame of fanaticism and revenge that you hide in your breast and heart no obstacle can exis You can consume by the flames of the majority not only Urdu but also those who speak and write it in no time." Further on the writer says: "Whether it is the Constituent Assembly

or the Indian Parliament, both are at the beck and call of the enemies of Urdu and Urduwalas. Yours is the majority Ishwar (God) is yours. This world of Ishwar(God) is yours and your forefathers'. You have only to say a word and the Hindi language will move unfettered from the Hindu Kush mountain range to Cape Comorin and your common nationality will prosper. Only Allah is the protector of Urdu, but where is the place for Allah in India ?" Even while reading the whole article in a free, fair and liberal spirit, as it should be read, we must take due note of the passages cited above and particularly of the underlined words, although our estimate of the article must not rest merely on them . The tenor of the article is to impress upon the reader the thesis that Urdu is being suppressed because it is the language of the minority and as a part of the systematic plan of forcing the Hindu culture upon the minority and it is suggested that this is only one of the many items of the tyranny of the Hindus over Muslims which is inspired by spite and revenge, and that even the constituent Assembly or the Indian Parliament is a party to it. The underlined words and the suggestion of spite or revenge would disentitle the article from the benefit of Explanation 4 to section 4(1) of the Indian Press (Emergency Powers) Act, 1931, for it cannot be said that malicious intention is absent. On the whole, therfore, although the article may not be strong enough to be actionable under section 153A of the Indian Penal Code, which ordinarily requires a positive proof of intention to provoke hatred or enmity, it would be actionable under clause (h) of section 4(1) of the I.P.(E.P.) Act, 1931, which requires merely a tendency directly or indirectly to promote feelings of enmity or hatred.

Id/- P. M. L.
23/4
Remembrancer of Legal Affairs.

U.R. to H.D. No. 4514 dated the 26th. April 1949.

JPE JPE. 18/5/56. 4 copies.

Office of the R.L.A.

The question for the opinion of the R.L.A. is whether the leaflet published by one P.R. Warang at the Anand Bhuvan Printing Press, Mahim, Bombay No. 16 is an unauthorised news-sheet within the meaning of section 2(10) of the Indian Press (Emergency Powers) Act, 1931. A "news-sheet" has been defined in sub-section (6) of section 2 of that Act as any document other than a newspaper containing public news or comments on public news or any matter described in sub-section (1) of section 4. The leaflet enumerated opinions of some top-ranking and other political leaders of the Country, including Mahatma Gandhi , on the R.S.S. which has been declared an unlawful association.

2. The first question is whether the leaflet contains public news or comments on public news. The fact that the R.S.S. is declared an unlawful association is no news now. The opinions which the leaflet quotes would not also be news, nor comments on any public news. The expression "public news" in section 2 of the Indian Press (Emergency Powers) Act means something such as current happenings or alleged current happenings of interest or likely to be of interest to the public or to a portion of the public; anything new or unknown when communicated to any other is news, and news, which is intended for or is communicated to the general public, no matter what its nature, is public news. An information already in possession of the public can hardly be called news and a document containing it cannot be described as a news-sheet. For any matter published or commented on to fall within the definition there must be an element of novelty about it (see Ratanlal's Law of Crimes 17th edition, p. 1367 and R.L.A's opinion No. 11117, dated 21-11-1947. That being the usually accepted criterion of "news" the collection of opinions would not fall within that expression.

3. The next question is whether the leaflet contains any matter described in sub-section (1) of section 4. There

is nothing in the opinions so collected together which would make them actionable under sub-section (1) of section 4. The obvious intention of making this collection is to impress upon the reader that the policy of declaring the R.S.S. as an unlawful association was wrong and unjustified. Such disapprobation would be saved by explanations 2 and 3 to sub-section (1) of section 4, for there is no attempt to excite hatred contempt or disaffection.

4. The leaflet cannot, therefore, be treated as a news-sheet, and consequently it would not be an unauthorized news-sheet.

Id/- P. M. L.
27/4
Remembrancer of Legal Affairs.

U.R. to H.D. (Political), No.4618 dated the 28th April 1949.

JPE. 16/5/66.
4 copies.

Confidential

Office of the R.L.A.

53.

The question referred to the R.L.A. for advice is whether the pamphlet in Marathi entitled "Constitution of the Police Raj" and also its Hindi counterpart issued by the Communist Party of India are actionable under section 4(1)(d) of the Indian Press (Emergency Powers) Act, 1931.

2. The pamphlet starts by discussing who the ~~farmers~~ framers of the Constitution are, how they were elected for the purpose and how the clauses of the Constitution diverge from the promises given by the Congress Party. Some provisions of the Constitution are then considered all with a view to lead to the conclusion that the Constitution is nothing but shackles of slavery and is intended for the purpose of bolstering up vested interests. Towards the conclusion it is stated that, unless the Constitution which seeks to convert the country into a vast prison is torn to shreds, and unless the kind of government which it seeks to establish is overthrown, the people of the country will not be able to establish their rule and will not secure the fundamental rights. Therefore, the pamphlet exhorts the common man to organise a united front for the purpose of burying deep this reactionary Constitution and to replace it by a true people's Government based on certain fundamental principles which are enumerated.

3. It is now well established that a citizen is entitled to criticise or comment upon any measure or act of Government, whether legislative or executive, and freely express his opinion upon it and more so a journalist, who may even express in the strongest condemnation of such measures and may do so severely and even unreasonably, perversely and unfairly, so long as he confines himself to such criticism and does not hold the Government itself to the hatred or contempt of his readers. There is nothing in the pamphlet which is inteded for the purpose of bringing

Government into hatred or contempt or for spreding disaffection against it. The criticism is no doubt made from a purely party considers to be the obnoxious features of the Constitution. The reference to toring the Constitution to shreds and of overthrowing the government which it proposes to establish is part of the argument which is intedded for the purpose of organising opposition to the Constitution but th re is nothing in the criticism to suggest that such opposition should be of a violent kind and should take the form of overthrowing the present Government by force. Such criticism of a draft Constitution which is in the making would, in the absence of any intention to excite contempt, hatred or disaffection, be saved by Explanation 2 and 3 to section 4(1). For these reasons the pamphlets would not be actionable under section 4(1)(d) of the Indian press (Emergency Powers) act, 1931.

Id/- P. M. L.
19/5
Remembrancer of Legal Affairs.

1. to H.D. (Poll) No. 311-Confl. dated the 20th May 1949.

15/5/56.
copies.

Office of the R.L.A.

Although it is true as pointed out by H.D. that in the body of the letter there is no direct incitement to violence, the writing must be taken as a whole together with the caption. It is the caption which is really objectionable; for, it invites in terms to meet the so-called fascism of the Congress Party by the bullet and not by the ballot. Whoever may be responsible for attaching this caption to the letter, whether it be the writer or the editor, the letter together with the caption has undoubtedly a tendency to incite to or encourage the commission of the offence of murder or any cognizable offence involving violence as required by clause (a) of section 4(1) and certainly the tendency directly or indirectly to encourage or incite any person to commit any offence as required by clause (f) of that sub-section. The benefit of the Explanations would not be available.

2. In my opinion, therefore, the letter with the caption would be actionable under clauses (a) and (f) of section 4(1) of the Indian Press (emergency Powers) Act, 1931.

Id/- P. M. L.
1/6.
Remembrancer of Legal Affairs.

U.R. to H.D. (Poll)., No. 341-Confl dated 2nd June 1949.

JPE. 15/5/56. 4 copies.

Office of the R.L.A.

Confidential.

An unauthorised news-sheet has been defined in the India Press (Emergency Powers) Act, 1931, to mean any news-sheet other than a news-sheet published by a person authorised under section 15 to publish it. A news-sheet means any document other than a newspaper containing public news or comments on public news or any matter described in sub-section (1) of section 4. The view taken by H.D. that the pamphlet does not contain any matter of the kind described in sub-section (1) of section 4 is correct. Nor can it be described as containing public news or comments on public news. The expression "public news" has been interpreted in R.L.A's opinion No. 4618 dated the 28th April 1949. An information already in the possession of the public can hardly be called news and a document containing it cannot be described as a news-sheet. In short, the document cannot be said to be a news-sheet; and it would, therefore, be difficult to sustain a prosecution for the offence under section 18(1) of the Act.

Id/- P. M. L.
9/6
Remembrancer of Legal Affairs.

U.R. to H.D.(Poll) No. 351- Confl., dated the 11th June 1949,

JPE. 15/5/56.
4 copies.